while considering an identical statute in *People* v. *Rosenheimer* (1911) 70 Misc. 433, affirmed, two judges dissenting, 146 App. Div. 875. The latter court distinguished this case from those cited above in that here the information was to be given *after* the commission of the offense. The distinction, however, is of no value; for the giving of the name does not definitely fasten the crime on the automobilist, since the injury may have been accidental, and therefore the case differs from those above only in the degree of likelihood that the information may prove self-incriminatory; and certainly the druggist would not be excused from reporting *after* he had made an illegal sale. On the contrary, one of the plain objects of the legislation was to secure just that information. It would seem, then, that under a strictly orthodox reverence for this privilege, all these and probably many other police regulations would be void.

The Missouri decision, in adopting the dissenting view of Justice Ingraham in the *Rosenheimer* case, lays down a better and wiser rule. The rigid inhibitions of the Fourteenth Amendment and their counterparts in the organic law of the several States have become resilient under the common sense opportunism of the doctrine of the police power,[11] and no good reason appears why the same elasticity should not be read into the guaranties against self-incrimination. Indeed, the wisdom of the existence of this Constitutional privilege has often been seriously questioned.[12] It has no place in the statute law of England,[13] and was originally inserted in our charters of liberties to prevent the infliction of torture on persons accused of crime.[14] Both history and reason combine in reaching the conclusion that the public can be protected from reckless driving by the statute under consideration without offending against the spirit and the meaning of the Constitutional privilege.

STATUTORY DUTY AND THE ASSUMPTION OF RISK.—Whether the principle that an employer is absolved from civil liability to his servant for injuries resulting from defects of which the servant knew and the danger of which he appreciated[1] applies to risks allowed to exist in violation of a statute, is a question upon which American courts are most sharply divided.[2] In the recent case of *Fitzwater* v. *Warren* (1912) 48 N. Y. L. J. No. 29 it was held, upon grounds of public policy, that assumption of risk cannot be pleaded as a defense when the action is founded upon a breach of statutory duty; and this decision is highly important, for in reaching its conclusion the Court of Appeals necessarily overruled *Knisley* v. *Pratt*,[3] which has often been cited as a leading case for the opposite view.

There is a fundamental difference between the master's common law duties and those prescribed by statute, in that the former are wholly indemnitive, since a violation, however flagrant, results in no liability

[11]Freund, Police Power § 69.

[12]Twining *v.* New Jersey *supra;* 4 Wigmore, Evidence § 2251.

[13]See Twining *v.* New Jersey *supra.*

[14]4 Wigmore, Evidence § 2250.

[1]For a discussion of the elements of the defense, see 12 COLUMBIA LAW REVIEW 629.

[2]2 Bailey, Personal Injuries (2nd ed.) 961.

[3](1896) 148 N. Y. 372.

until an injury is caused and then only in favor of the person injured, while the latter are primarily preventive, since a violation may involve a penal liability to the State irrespective of the outcome. But, while indemnitive in essence, the contingent common law liability necessarily exerts an incidental preventive effect. Similarly, a penal statute, while primarily preventive, in prescribing definite standards of care establishes new duties on the master's part toward the servant which may be the basis of a civil action;[4] and it must be presumed that this effect was within the intention of the legislature.[5] A statute of this character thus has two distinct phases; it creates a duty toward the State and also a duty toward servants.[6] Viewed solely from the second point of view, the duty created by statute seems no higher than a similar duty at common law.[7] It seems, therefore, that the servant would have the same right to assume the risk of his master's breach of a statutory obligation as he would the latter's ordinary failure to exercise due care, if no collateral issue were involved. For while the legislature may remove the defense of assumption of risk where either a statutory[8] or common law[9] duty is concerned, the better interpretation of such a statute as that in the principal case seems to be that there was no intention to produce exactly that result.[10] But when it is considered that the primary purpose of the enactment was to create a new public duty, the problem assumes a different aspect. The question is no longer whether the legislature intended for the servant's benefit to remove the defense of assumption of risk, or whether from the standpoint of justice to the employee such a result is desirable, but whether the employee shall be allowed to encourage his master's non-compliance with a positive obligation to the State. In view of the servant's peculiarly strategic position it seems that upon grounds of public policy the courts should refuse to recognize in him any power to aid his master in violating a penal law.

But judges have generally thought that whether the defense of assumption of risk should be denied in an action based upon a statutory duty depends upon whether in theory the doctrine of assumed risk is founded upon the contract of employment between master and servant.[11] Though it is generally admitted that a contract to disregard the master's statutory obligation would be contrary to public policy,[12] courts which explain the doctrine of assumption of risk upon the broader theory *volenti non fit injuria* feel themselves compelled to allow the

[4]Groves *v.* Wimborne (1898) 2 Q. B. 402; 2 Labatt, Master and Servant, 2177; Narramore *v.* C. C. C. & St. L. Ry. Co. (1899) 96 Fed. 298; *cf.* Parker *v.* Barnard (1883) 135 Mass. 116; see 10 COLUMBIA LAW REVIEW 487.

[5]See Narramore *v.* C. C. C. & St. L. Ry. Co. *supra.*

[6]See Dresser, Employers' Liability, 603.

[7]See Langlois *v.* Dunn Worsted Mills (1904) 25 R. I. 645.

[8]Kansas City, M. & B. R. R. Co. *v.* Flippo (1903) 138 Ala. 487, 499.

[9]Coley *v.* North Carolina R. R. Co. (1901) 128 N. C. 534.

[10]St. Louis Cordage Co. *v.* Miller (1903) 126 Fed. 495; Langlois *v.* Dunn Worsted Mills *supra;* D. & R. G. R. R. Co. *v.* Norgate (1905) 141 Fed. 247; D. & R. G. R. R. Co. *v.* Gannon (1907) 40 Colo. 195; Osterholm *v.* Mining Co. (1909) 40 Mont. 508.

[11]See D. & R. G. R. R. Co. *v.* Norgate *supra.*

[12]Narramore *v.* C. C. C. & St. L. Ry. Co. *supra;* Streeter *v.* Western Scraper Co. (1912) 254 Ill. 244.

defense.[13] If the result necessarily depended upon deciding which explanation of the servant's right to assume the risk is correct, the prospect of a uniform rule would not be encouraging. But when it is once conceded that as a matter of fact to allow the defense permits an effective encouragement of the master's noncompliance with the statute, it becomes entirely immaterial upon what theory the defense, if admissible, is based. Any effective encouragement to violate the law, whether it is founded upon agreement or consent, seems equally against public policy. The result in the principal case, even disregarding the view in its jurisdiction that assumpton of risk is based on contract,[14] therefore seems sound. But it is undeniable that this and the decisions in other States to the same effect depend largely upon a willingness to limit where possible the strict application of the doctrine of assumption of risk, which indicates that, even under present conditions, the courts are not entirely irresponsive to the popular judgment of what the law ought to be.[15]

CORPORATE DOMICILE.—Whether a fictitious body can have either residence or domicile is questionable, for it requires considerable mental exertion to visualize so cloudy an entity and permanently locate it in one place.[1] Admitting, however, that there are theoretical objections, it is often important to do so in order to fix the *situs* of its rights and liabilities.[2] Being a mere creature of the law, the corporation traces its domicile of origin to the jurisdiction which has given it birth,[3] and a different domicile cannot be afterwards acquired, since corporate existence is, by the terms of its creation, limited to the territory of the creating sovereignty.[4] The fact that the corporation is thus narrowly confined would seem in theory to prevent even its presence in any other jurisdiction, and the acquisition of foreign residence would, therefore, be impossible. The courtesy of other jurisdictions, however, permits the projection of the corporate entity beyond the bounds of its origin in order to conduct operations in foreign States practically as an individual,[5] but subject to any limitations which

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[13]D. & R. G. R. R. Co. *v.* Norgate *supra;* D. & R. G. R. R. Co. *v.* Gannon *supra;* Osterholm *v.* Mining Co. *supra.*

[14]Dowd *v.* Railway Co. (1902) 170 N. Y. 459.

[15]The opinion of the court by Cullen, Ch. J., concludes as follows: "There seems at the present day an effort by constitutional amendment to render a master liable to his employee for injury received in his employment, though the master has been guilty of no fault whatever, and I feel that such effort is in no small measure due to the tendency evinced at times by the courts to relieve the master, though concededly at fault, from liability to his employee on the theory that the latter assumed the risk of the master's fault."

[1]Minor, Confl. of Laws § 67.

[2]Savigny, Confl. of Laws, 63.

[3]Bank of Augusta *v.* Earle (1839) 13 Pet. 519.

[4]Duke *v.* Taylor (1896) 37 Fla. 64; Holbrook *v.* Ford (1894) 153 Ill. 633; Beale, For. Corp. § 71.

[5]Demarest *v.* Flack (1891) 128 N. Y. 205. In Land Grant R. R. Co. *v.* County Comm. (1870) 6 Kan. 245, the Kansas court very properly excluded a corporation chartered by Pennsylvania to do business in any State but Pennsylvania.